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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,336	02/18/2000	Scott C. Anderson	003-005-CP	7956

32746 7590 07/28/2004

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/507,336	Applicant(s) ANDERSON ET AL.	
	Examiner david shay	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-38, 40 and 41 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3739

The specification is objected to because there is no element 25 in Figure 10 as discussed on page 24, there is no element 192 in Figure 25 or 26 as discussed on page 24, lines 23-33. On page 32 line, 10 it appears that the reference to Figure 35 should be to one of figure 53A or 538.

The drawings are objected to because Figure 36 has two different elements 211. The figure should be corrected and the specification modified to correspond to the corrected Figure.

Applicant's cancellation of all claims, save those directed to group IV, is considered constructive election thereof.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34-36 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown.

See figure 2 and 3 and column 2, line 50 to column 5 line 67, wherein the treatment is construed to be ablation, since the temperature to which the fatty deposit such as plaque is raised is in the claimed range.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in combination with Panescu et al. Brown teaches a method such as claimed except the discussion of how the temperature is determined. Panescu et al teach controlling the depth of ablation by using temperature measurement. It would have been obvious to control the tissue temperature in the method of Brown using temperature measurement, since this can provide controllable ablation, as taught by Panescu et al, thus producing a method such as claimed.

Claims 34, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in combination with Swanson et al. Brown teaches a method such as claimed except epicardial placement and activation of no more than half the ablating elements. Swanson et al teaches the desirability of ablating on the epicardium and that less than half the total number of

Art Unit: 3739

electrodes can be used. It would have been obvious to, the artisan of ordinary skill to employ the method of Brown in the method of Swanson, since this would enable the determination of the state of inflammation and thus the need for treatment of fatty deposits which exact on the epicardium, as taught by Swanson et al or to include the method of Swanson et al in the method of Brown, since the method of Swanson et al is applicable to both intravascular and extravascular treatments, thus producing a method such as claimed.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in combination with Swanson et al as applied to claims 34, 37, and 40 above, and further in view of Ben Hain et al. Ben Hain teaches drawing tissue into a suction well prior to ablation. It would have been obvious to employ the step of drawing the tissue desired to be ablated into suction surrounding the ablating elements since this allows the catheter to remain stable while the tissue is ablated, thus producing a method such as claimed.

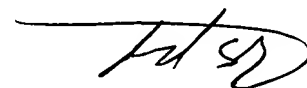
Claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed April 12, 2004 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330